



Comptroller General
of the United States
Washington, D.C. 20548

143551

Decision

Matter of: Intertec Aviation

File: B-239672.4

Date: April 4, 1991

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Raymond S.E. Puslkar, Esq., and Alison L. Doyle, Esq., McKenna & Cuneo, for Lockheed Areomod Center, Inc., an interested party.
Roger G. Lawrence, Esq., Department of the Navy, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

BEST

1. Contracting agency had reasonable basis to reject protester's proposal as technically unacceptable where best and final offer failed to comply with material requirements under the request for proposals. Offeror should not expect to be granted an additional opportunity to clarify or revise its proposal after submission of best and final offers.
2. Agency conducted meaningful discussions where it directed protester to specific areas in which its proposal was deficient or noncompliant with material solicitation requirements.

DECISION

Intertec Aviation protests the Navy's rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N68520-89-R-0029. Intertec also protests the agency's award of the contract to a higher-priced offeror, asserting that it could not be justified on the basis of a cost/technical tradeoff decision. We deny the protest.

The RFP, issued on September 29, 1989, required offerors to submit proposals for the labor, materials, and facilities needed to accomplish standard depot-level maintenance, periodic depot maintenance, and mid-term inspection of Navy and Air Force C-9 aircraft. The RFP solicited a firm, fixed-price requirements contract. Award was to be made on the

basis of the proposal offering the best value to the government, price and other factors considered. The proposals were to be evaluated on the basis of the following six areas: management/experience, production/facilities, quality, flight safety, industrial safety, and cost/price. These areas were listed in descending order of their importance for evaluation purposes, with the first three approximately equal in weight. The RFP advised offerors that an unsatisfactory rating in any of the five technical areas would render the proposal unsatisfactory overall. In addition, each proposal was to be rated as presenting low, medium, or high risk. Technical proposals were to be evaluated separately from cost proposals.

The Navy received seven proposals; the agency initially found all seven to be unacceptable but susceptible of being made acceptable, and requested additional information from each of the offerors. After the seven firms' responses were received, only two firms were found to be in the competitive range; Intertec's proposal was evaluated as still unacceptable and was rejected. Intertec protested the agency's exclusion of its proposal from the competitive range, protesting that its proposal was capable of being made acceptable without major revisions.

We sustained the protest in Intertec Aviation, B-239672; B-239672.2, Sept. 19, 1990, 69 Comp. Gen. ___, 90-2 CPD ¶ 232, on the basis that the deficiencies upon which the Navy based its exclusion of the proposal were minor in relation to the scope of work and the revisions necessary to correct them; the deficiencies, in some cases, had been corrected during discussions but the corrections apparently had been overlooked; and because discussions, in certain instances, had not been sufficiently specific to advise Intertec of the needed corrections. We recommended that the Navy reopen negotiations with Intertec included in the competitive range and then request a new round of best and final offers (BAFOs).

The Navy conducted a second round of written discussions with the two firms that originally had been included in the competitive range, Lockheed Aeromod Center, Inc. and Pemco Aeroplex Inc., as well as Intertec and another firm whose proposal had initially been rejected as unacceptable. Written discussions were followed by oral discussions with each of these offerors, allowing the firms to ask for any clarifications they might need. A second round of BAFOs was then requested and received.

The technical evaluation team (TET) reviewed Intertec's proposal and found that it was acceptable but gave it a high risk rating, based on deficiencies in the areas of industrial safety, management/experience, and production/facilities. The

TET recommended awarding the contract to Lockheed, whose proposal it found acceptable and whose risk factor it rated as low.

The source selection evaluation board (SSEB) disagreed with the TET's evaluations, finding Intertec's proposal unacceptable (based on deficiencies in the same areas) and Lockheed's proposal highly acceptable. The SSEB agreed that Lockheed should receive the award. The source selection authority reviewed the TET's and the SSEB's reports and recommendations and selected Lockheed's proposal as the one that represented the best overall value to the government. Award was made to Lockheed, and this protest followed.

Intertec contends that the Navy failed to conduct a fair and impartial evaluation of the proposals, arguing in essence that the deficiencies cited by the agency either did not exist or were the result of an inadvertent omission and therefore readily correctable. The protester argues that the Navy failed to conduct meaningful discussions. Intertec also contends that the Navy did not properly consider cost in its award decision, since Intertec's cost proposal was not evaluated.

The Navy relied on three deficiencies in finding Intertec's proposal unacceptable. In the area of industrial safety, the RFP required a description of the fire protection system and fire-fighting equipment for the offeror's facilities. During the initial request for information prior to the exclusion of Intertec's offer from the competitive range, Intertec was asked generally to submit evidence of compliance with the requirement. The protester provided further details to augment its proposal in this area. The Navy found, however, that Intertec had not demonstrated full compliance with a Naval instruction which governs aircraft hangars. The protester argued that any failure to exactly meet the requirement could not reasonably be considered to be of such weight, relative to the entire proposal, that it would render the proposal unacceptable and not susceptible of correction. The agency offered no further explanation about what the protester's proposal specifically lacked at that time, and in our prior decision in this matter, we agreed that this deficiency did not appear to provide a reasonable basis for excluding the proposal from the competitive range.

In the discussions held as a result of our earlier decision, the Navy referred to the specific sections of the RFP requirement for which compliance was found deficient. Under industrial safety, the agency pointed out that the RFP required a description of how the contractor would make fire trucks available during takeoffs and landings of aircraft and information establishing the positioning and response times

for the required fire vehicles. In the oral discussions, Intertec was asked if it intended to comply with the requirements for fire protection, including the availability of fire trucks. Intertec states that its personnel assured the Navy that they intended to meet the requirement, and proceeded to negotiate an agreement with a supplier to lease two fire trucks and to arrange for the qualified personnel required to operate the vehicles. Intertec contends that it was only after it received the protest report from the agency that it realized that it had inadvertently omitted the information regarding compliance with this requirement from its BAFO.

Intertec argues that it was unreasonable for the Navy to find Intertec's entire proposal unacceptable based on so minor and readily correctable deficiency. Intertec points out, further, that the area of industrial safety was the least important of the five technical areas, and that fire protection is only one part of that area.

The burden is on offerors to submit an adequately written proposal from the outset. Inter-Continental Equip., Inc., B-224244, Feb 5, 1987, 87-1 CPD ¶ 122. Where a proposal fails to include information that is called for by the solicitation and is necessary to establish compliance with the specifications, there is a reasonable basis to find the proposal technically unacceptable. Id.

Here, the RFP provided that an unsatisfactory rating for any of the five technical areas would render the proposal unsatisfactory overall, regardless of the relative importance of the particular area that was rated unsatisfactory. We thus are unpersuaded by the protester's argument about the relative importance of this area in the overall scheme of the proposal. We are similarly unpersuaded by the argument that the deficiency was so readily correctable, and the implication that the Navy should have made allowances for the submission of this information after the receipt of BAFOs. While Intertec argued in its previous protest that its deficiencies were susceptible of correction, in this instance, at least, we do not find that correction has taken place. Notwithstanding any actual arrangements the firm may have made for equipment and personnel to meet the fire truck requirement, there was no information in the BAFO to show compliance. Given that the fire protection requirements, specifically, the fire/crash equipment and personnel arrangements, seriously affect the safety of personnel and property, we think it was reasonable for the Navy to conclude the omission was a critical

deficiency which rendered the proposal unsatisfactory in the industrial safety area.^{1/}

In the area of management/experience, the RFP required that "assigned engineers have a minimum of a Bachelor of Science (BS) degree in Aeronautical/Aerospace (Preferred) or Mechanical Engineering from an accredited college or university and 5 years experience in aircraft structures, repair or design." No specific number of engineers was required; rather, the agency states that the size and structure of the engineering staff proposed was one of the competitive aspects of each proposal that would be comparatively graded by the technical team, along with education and experience.

In its initial proposal, Intertec had proposed to provide engineering support services through its affiliated company, Dalfort Aviation. It listed seven engineers and provided resumes showing their education and work experience, and explained that Dalfort personnel (in Dallas) would communicate with Intertec personnel at the work site (in Phoenix) by telephone. The Navy assessed this arrangement as involving some degree of risk in its initial evaluation, but found it acceptable. In the discussions held with Intertec prior to submission of Intertec's BAFO, the Navy requested evidence that the assigned engineers meet the minimum requirements for education and experience and requested an organizational chart reflecting on-site and off-site engineering staff. In its BAFO, Intertec stated that its assigned engineers do have the minimum of a BS in engineering and do meet the 5-year experience requirement. To resolve the Navy's previous concern about communication between Dallas and Phoenix, it indicated that it would move two engineers on-site, to be backed up by the five engineers remaining in Dallas. Notwithstanding Intertec's statement of compliance with the requirement, the resumes that it submitted did not show engineering degrees for three of the members of the Dalfort staff. The Navy found the lack of degrees for the proposed engineers to be deficient, and rated this area of the proposal unacceptable.

Intertec argues that the lack of degrees for the staff was not an actual deficiency because the two engineers who were to be assigned to the site in Phoenix are fully qualified. The protester contends that the Navy acted arbitrarily in treating

^{1/} Intertec argues that the requirement for fire/crash equipment was waived for Lockheed. The record does not support this contention. Lockheed proposed acceptable fire/crash protection and the agency reports that Lockheed has met its obligations in this regard at the site since performance under the contract began.

information "that went beyond the requirements of the RFP" as a fatal deficiency, asserting that the Dalfort staff were in the nature of extras, not required to meet the same standard as the employees actually assigned to the work site. However, Intertec stated, in its response to the discussion question, that the organizational chart it was submitting "reflects the dedicated on-site and off-site engineering staff," and pointed out that the engineers assigned on-site would be backed up by the entire engineering staff of Dalfort. The record shows that the engineers are important to ensure that the repair and maintenance work is properly performed. Specifically, the engineers are to ensure that analyses of structural defects and engineering solutions are appropriate and result in proper repairs and the safe performance of the airplane. In these circumstances, we cannot conclude that it was unreasonable for the agency to evaluate the proposal on the basis of all the engineers proposed, that is, all engineers who might perform the work under the contract, and to hold them to the standard established under the RFP--in short, to find the lack of engineering degrees unacceptable.

Intertec stresses in its protest that the deficiencies cited by the agency in its evaluation of Intertec's proposal were relatively minor and susceptible of correction. First, as discussed above, we do not agree that the deficiencies identified were relatively minor. Second, while the contracting officer is required to include in the competitive range (for the purpose of conducting discussions) all proposals that have a reasonable chance of being selected for award, see Federal Acquisition Regulation § 15.609 (1990), once the offeror has been given the opportunity to submit a BAFO, the agency need not reopen discussions to resolve technical deficiencies remaining or first introduced in the BAFO. See IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. An agency is not required to help an offeror by conducting successive rounds of discussions until omissions are corrected and the proposal is brought up to an acceptable level. Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1 CPD ¶ 523.2/

Intertec also argues that the Navy failed to conduct meaningful discussions. In conducting discussions, an agency is only required to direct an offeror to areas in which its proposal

2/ In light of our determination that it was reasonable for the Navy to find Intertec's proposal unacceptable in the two areas discussed, and that these deficiencies were material so as to support rejection of the proposal, we do not address the finding of unacceptability concerning Intertec's painting facilities.

is deficient or noncompliant with solicitation requirements.
See Digital Equip. Corp., B-235665, Sept. 21, 1989, 89-2 CPD
¶ 260.

Here, we find that the record indicates that the agency conducted adequate discussions concerning these two deficiencies. Regarding the engineering degrees, the written discussions specifically included a request for evidence that assigned engineers have a minimum of a bachelor of science degree in Aeronautical/Aerospace (preferred) or mechanical engineering from an accredited college or university and an organizational chart reflecting on-site and off-site engineering staff. Also, in discussions, Intertec was asked for a detailed description of rescue fire/crash vehicles including quantity and type, water capacity discharge rate, vehicle manning and hours of availability as required by the RFP.

Finally, Intertec contends that in order to award the contract to a higher-priced offeror, the Navy was required to support its decision with a rational cost/technical tradeoff. Intertec argues that the agency did not evaluate Intertec's cost proposal and did not properly consider cost as part of its award decision. However, a contracting agency is not required to consider lower cost proposals in its award decision where those proposals have been judged technically unacceptable. See GLH, Inc., B-232156, Nov. 18, 1988, 88-2 CPD ¶ 490. Since we have found that the determination of technical unacceptability was reasonable, we have no basis to require that the agency consider Intertec's proposal further.

The protest is denied.



James F. Hinchman
General Counsel